

Notice of Decision of the Northern Ireland Social Care Council's Fitness to Practise Committee

Name: Jenny Ann Marie McCullough

SCR No: 6022603

NOTICE IS HEREBY GIVEN THAT the Fitness to Practise Committee of the Northern Ireland Social Care Council, at its meeting on **02 February 2024**, made the following decision about your registration with the Northern Ireland Social Care Council:

The Committee found the facts proved;

The Committee found that your fitness to practise is impaired by reason of your convictions;

The Committee decided to make an Order suspending your registration for a specified period of six months ('a Suspension Order').

Particulars of the Allegation:

That on the 29 August 2023, whilst being registered as a social care worker, under the Health and Personal Social Services Act (Northern Ireland) 2001 (as amended), you were convicted of the following offence at the Magistrates' Court:

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| 1. | Defendant on 12 th day of July 2019 assaulted [redacted] thereby occasioning her actual bodily harm, contrary to Section 47 of the Offences Against the Person Act 1861. |
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And your actions, as set out above, show that your fitness to practise is impaired by reason of your conviction.

Procedure

The hearing was held under the fitness to practise procedure.

Preliminary Matters

The Registrant was in attendance and was not represented. The Council was represented by Mr Peter Carson, Solicitor, Directorate of Legal Services.

Declarations of Conflict of Interest

The Chair of the Committee advised that none of the Committee Members had any conflict of interest with the case.

Hearing Bundle

The Committee accepted the hearing bundle of documents into evidence, and marked it as Exhibit 1. The Committee also accepted into evidence references on behalf of the Registrant from Angela Lamont (marked as Exhibit 2) and Bridget Carey (marked as Exhibit 3).

Background and Submissions on Facts

Mr Carson said that the Registrant is registered on Part 2 of the Register, and that she commenced work as a domiciliary care worker with the Northern Health and Social Care Trust ('the Trust'), on 17 July 2015.

Mr Carson told the Committee that the Council received an Employer Referral Form ('ERF') from Mr Thomas Cooke, the Trust Area Manager for Domiciliary Care, dated 19 July 2019. The ERF reported that:

'Jenny reported to the office that she had been arrested and charged over the weekend, in relation to an incident which had happened the previous night in a bar.

An Altercation took place between the Homecare Workers and an ex-service user's gran-daughter and the grand-daughter's partner.

One of the Homecare Workers suffered an injury and one of the other parties suffered an injury...'

Mr Carson told the Committee that the incident occurred on 12 July 2019, and took place at the Northern Star Bar, Ballymoney. He noted that the incident did not occur in the workplace.

Mr Carson said that the contested hearing was held at Coleraine Magistrates' Court on 16 and 26 June 2023, and that the Registrant was convicted of Assault Occasioning Actual Bodily Harm. He said that she was sentenced on 29 August 2023 and received a Community Sentence of 220 hours unpaid work, and that she was required to pay a £500 compensation penalty.

Mr Carson referred the Committee to the PSNI Case Summary which documented that on 12 July 2019, there had been a '*misunderstanding*' between the Registrant and the victim about the victim's grandmother, which upset the victim. It further reported that the victim left the bar in an attempt to diffuse the situation and that the Registrant followed. The Case Summary reported that the victim was then approached by another person, and that an exchange occurred. It is alleged that the other person smashed a glass into the left-hand side of the victim's face, and it is alleged that the Registrant then knocked the victim onto her back and straddled her, and repeatedly punched her to the face.

Mr Carson told the Committee that the Registrant was interviewed by Police in respect of the incident on 14 July 2019. The Registrant stated that she had drunk a lot of alcohol, and could not remember precisely what had happened.

Mr Carson referred the Committee to the victim's witness statement. The victim alleged that she was '*rugby-tackled to the ground*' and was sat on top of by the Registrant whilst the Registrant punched her face and head. The victim also stated that she could not defend herself as her hands were trapped down by her side.

Mr Carson referred the Committee to the Police witness statement from a member of the public who witnessed the Registrant's actions.

Mr Carson invited the Committee to find the facts proved by reference to the Certificate of Conviction contained in the hearing bundle.

The Registrant stated that she admitted the facts of the Particulars of the Allegation.

Taking all of this into account, the Committee found the facts proved in accordance with Rule 4 (1) (d) of the Rules, and the Registrant's admission.

Fitness to Practise

The Committee proceeded to consider if the Registrant's fitness to practise was impaired.

The Registrant advised the Committee that she did not admit that her fitness to practise was impaired.

The Committee heard a submission from Mr Carson, who said that the Registrant's conviction for the offence of Assault Occasioning Actual Bodily Harm called into question her ability to work in social care services and to remain on the Register without restriction, or to be registered at all. He referred the Committee to the Standards of Conduct and Practice for Social Care Workers ('the Standards'), which he submitted the Registrant's criminal conviction breached as follows: 5 - 5.8.

Mr Carson told the Committee that the Registrant's behaviour fell well below the minimum standard expected of a registered social care worker, and called into question her fitness to practise. He referred the Committee to Schedule 2, Paragraph 24 (3) of the Rules and the issues that the Committee should take into account when considering the matter of impairment. He submitted that consideration of insight was central when the Committee looked to whether the Registrant's behaviour was capable of remediation. He noted that the Registrant, when interviewed by the Police, denied any recollection of the events and pleaded not guilty to the charge of Assault Occasioning Actual Bodily Harm. He noted that the Registrant's written reflection indicated some level of acceptance and insight into her behaviour. However, he submitted that this reflection had zero consideration as regards the impact of the Registrant's behaviour on the victim. He submitted, therefore, that the Registrant's insight was incomplete and that her behaviour brought the social care profession into disrepute.

Mr Carson further submitted that there remained a risk of repetition of the Registrant's criminal behaviour, and he noted the severe physical and mental impact of the Registrant's assault on the victim. He further submitted that public interest was engaged in this matter, and that public confidence in the social care workforce and in the Council would be undermined if a finding of impairment was not made. He submitted that this was a particularly nasty attack, and that there was no other option but to consider that the Registrant's fitness to practise was impaired.

The Committee received sworn evidence from the Registrant, who denied that her fitness to practise was impaired. She provided the Committee with two references, from Angela Lamont from Action Cancer, Shop

Manager, and Bridget Carey. Angela Lamont's reference related to the Registrant's completion of her community service imposed as a result of her criminal conviction. Bridget Carey's reference related to her professional and personal relationship with the Registrant.

The Registrant told the Committee that she understood the impact of her actions on the victim, and that she was ashamed to have caused pain to another person. She said that the incident runs through her head when she is awake at night, and that she is deeply ashamed and very sorry. She told the Committee that the incident happened as she had taken too much alcohol and that she had not adhered to her work ethics, and understood how this looks to the public and service users. She said that this was an isolated incident, and that she hopes that the public would judge her at face value and how she treats service users. She said that she has completed 220 hours of community service, which was a positive experience. She said that with hindsight she would do things differently. She told the Committee that she has stopped taking alcohol.

In answer to questions from Mr Carson, the Registrant said that her employer was aware of the criminal investigation. She acknowledged that in her email to the Council on 11 September 2023, there was no mention of any impact of her actions on the victim. She said that she was very sorry for what she had put the victim through, and accepted that her written reflection did not make mention of the victim. She said that she honestly did not know why she had become involved in this incident, and that she was shocked by her behaviour. She said that she had taken too much alcohol on the night and couldn't believe her behaviour.

In answer to questions from the Committee, the Registrant said that the reference from Bridget Carey had been prepared for another hearing, and that her written reflection was prepared for this hearing. She said that she would do things differently now and would not break a service user's confidentiality or approach a service user's relative outside of work. She said that she has abstained from alcohol for a number of months. She confirmed that her colleagues were aware of the criminal investigation, and that they were shocked about what had happened. She accepted that a service user's relatives would be very concerned about her actions and their relative's safety. She said that she has learned a lot about what has happened, and that she would never allow something like this to happen again.

The Committee considered the submissions from Mr Carson on behalf of the Council and the Registrant's sworn evidence, and had regard to all of the evidence in the case. The Committee accepted the advice of the Legal Adviser. She referred the Committee to the Standards, and advised it to adopt a sequential approach when considering this issue. In particular, she asked it to take into account the nature and content of the criminal conviction against the Registrant, and reminded the Committee that it was being asked to determine whether the Registrant's fitness to practise was impaired because of this conviction. She referred the Committee to Paragraph 24 of Schedule 2 of the Rules, and the requirements as set out in the case of the GMC v Cohen, looking at the current competence and behaviour of the Registrant, along with the need to protect service users, members of the public, the upholding of proper standards of behaviour and maintaining of public confidence in the social care profession. She further referred the Committee to the findings of Dame Janet Smith in the 5th

Shipman Report as regards the potential causes of impairment. She also referred the Committee to the case of CHRE v NMC & Grant 2011.

The Committee considered whether the Registrant's fitness to practise was impaired by reason of her conviction, as set out in the Particulars of the Allegation.

The Committee, in considering the issue of impairment of fitness to practise, took account of Paragraph 24 (3) of Schedule 2 of the Rules, which states that it should have regard to:

- (a) whether it is satisfied as to the reason for the alleged impairment of fitness to practise;
- (b) the Standards of Conduct and Practice issued by the Council under Section 9 of the Act;
- (c) whether the impairment is capable of remediation;
- (d) whether the impairment has been remediated;
- (e) the risk of repetition; and
- (f) the public interest.

The Committee noted that the Registrant's conviction for Assault Occasioning Actual Bodily Harm was very serious, and that it involved a violent assault on a member of the public.

The Committee had regard to the Standards and the Council guidance titled 'Making a Determination of Impaired Fitness to Practise: Guidance for Committees on Remediation' ('the Guidance'). The Committee was satisfied that the Registrant's actions were in breach of the following Standards:

Standards of Conduct

Standard 5: As a social care worker, you must uphold public trust and confidence in social care services. In particular you must not:

- 5.8 Behave in a way, in work or outside work, which would call into question your suitability to work in social care services.

The Committee had limited information from the Registrant as regards action which she had taken to remediate her behaviour. The Committee considered that such conduct was not easily remediable. The Committee took into account the serious harm that was caused to the victim, which necessitated her attending hospital. The Committee also took into account the Registrant's evidence that she has recently stopped the consumption of alcohol, and that she acknowledged the part that alcohol played in her behaviour. The Committee also noted the evidence that the Registrant worked without issue for four years after the incident, which took place in July 2019. The Committee noted that the Registrant has successfully completed her community service within a short period of her sentencing. The Committee accepted that this was an isolated incident, albeit very serious, resulting in significant harm to the victim. The Committee accepted the Registrant's expression of regret and shame in her evidence at the hearing. However, the Committee noted that the Registrant did not make reference to the victim, or the impact of her assault on the victim, in her previous submissions to the Council. In these circumstances,

the Committee considered that the Registrant's insight was developing and not complete. The Committee also considered that, in the circumstances of this case, the risk of repetition was low.

The Committee concluded that the Registrant's recent conviction for Assault Occasioning Actual Bodily Harm brought the social care profession into disrepute. The Committee considered that the public would find it totally unacceptable that a registrant who had received a conviction for the offence of Assault Occasioning Actual Bodily Harm, which resulted in a victim sustaining physical and mental injury, remained on the Register without restriction. The Committee considered that the public would be dismayed to learn that the Registrant knew that the victim was a relative of a service user, and became involved in this incident along with another social care worker.

In all of the circumstances, the Committee concluded that a finding of impaired fitness to practise was, therefore, necessary for the maintenance of public confidence in the social care profession and the upholding of proper standards and behaviour. The Committee determined that public confidence in the social care profession, and the Council as a regulator, would be undermined if a finding of impaired fitness to practise was not made.

Therefore, the Committee concluded that the Registrant's fitness to practise is currently impaired by reason of her conviction for the offence of Assault Occasioning Actual Bodily Harm.

Sanction

In reaching its decision on sanction, the Committee considered the submission of Mr Carson on behalf of the Council, the submission from the Registrant, and had regard to all of the evidence in this case. Mr Carson referred the Committee to mitigating factors, and advised that the Registrant had no previous referrals to the Council and that she had the benefit of a previous good character and work history.

As regards aggravating factors, Mr Carson submitted that the Registrant being convicted for Assault Occasioning Actual Bodily Harm could not be considered to be at the lower end of the spectrum of unacceptable behaviour. He said that this was a violent attack on a victim, who was the granddaughter of a service user and who had already been attacked and was incapacitated. He said that the Registrant had shown limited insight into the impact which her actions had on the victim. He suggested that the Registrant's actions were fundamentally incompatible with remaining on the Register.

Mr Carson submitted that the imposition of a sanction was appropriate and fair, and that the sanctions of a Warning, a Conditions of Practice Order or a Suspension Order would not be sufficient to protect the public or be appropriate, and would not satisfy the public concerns. He referred the Committee to paragraphs 4.4 and 4.7 of the Guidance, and suggested that the sanction of a Removal Order should be considered.

The Registrant told the Committee that she would hope to have a chance to continue doing a job that she loved and was good at. She said that she loved making a difference in people's lives.

The Registrant said that she understood the impact which her actions have had on the victim, and that she is so remorseful for what she has done. She said that the conviction does not reflect the person she is, and she said that she is a kind, loving and caring person.

The Registrant told the Committee that she is currently paying the penalty fine of £500 in instalments. She said that she has two daughters who rely on her, and that she is the sole earner in her household.

The Registrant said that she had worked for four years in social care after the incident without any issue, and that she has never been in trouble with the Police before. She told the Committee that something like this will never happen again. She said that she would like to have the chance to show that she is a good, kind person.

The Committee accepted the advice of the Legal Adviser. She referred the Committee to the Guidance, and reminded the Committee to consider the question of sanction in ascending order of severity, paying particular attention to the issue of proportionality.

She referred the Committee to Paragraph 26 of Schedule 2 of the Rules which provides that, upon a finding of impairment of fitness to practise, the Committee may:

- (a) impose no sanction; or
- (b) warn the Registrant and direct that a record of the warning should be placed on the Registrant's entry in the Register for a specified period of up to 5 years; or
- (c) make a Conditions of Practice Order for a specified period not exceeding 3 years; or
- (d) make an Order suspending the Registrant's registration for a specified period not exceeding 2 years (a 'Suspension Order'); or
- (e) make an Order for removal of the Registrant's registration from the Register ('a Removal Order').

She further reminded the Committee that in deciding which sanction to impose, the Committee should take into account:

- (a) the seriousness of the Particulars of the Allegation;
- (b) the degree to which the Registrant has fallen short of any expected standards;
- (c) the protection of the public;
- (d) the public interest in maintaining confidence in social care services; and
- (e) the issue of proportionality.

The Committee applied the principles of fairness, reasonableness and proportionality, weighing the public interest against the Registrant's interests, and taking into account any aggravating and mitigating factors in the case. The public interest includes the protection of members of the public, including service users, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour within the profession. The Committee took into account its powers under Paragraph 26 of

Schedule 2 of the Rules in relation to the sanctions available to it, and also had regard to the Guidance, bearing in mind that the decision on sanction was one for its own independent judgement.

The Committee recognised that the purpose of sanction is not to be punitive, although a sanction may have a punitive effect. The Committee considered the aggravating and mitigating factors in this case.

The Committee considered the mitigating factors to be:

- There have been no previous referrals as regards this Registrant to the Council;
- The events in question took place in July 2019 – over four years ago;
- Since the incident in 2019, the Registrant worked as a social care worker, without incident, until her conviction in August 2023;
- The Registrant fully co-operated in the Council's investigation and engaged with the Committee at the hearing;
- The Registrant has undertaken corrective steps by recently abstaining from the consumption of alcohol;
- The Registrant demonstrated expressions of remorse and regret for her actions;
- The Registrant gave assurances that she had learnt from what had happened, and that her behaviour would not be repeated in the future;
- The Registrant showed some developing insight into the impact of her criminal assault on the victim;
- It was an isolated incident; and
- The Registrant provided two positive references, one of which was particularly relevant to her completion of community service.

The Committee considered the aggravating factors to be:

- The Registrant was convicted of Occasioning Actual Bodily Harm, a serious criminal offence;
- The victim sustained physical and psychological harm;
- The victim was a service user's relative;
- The Registrant's actions fell far below the expected standards of a social care worker and constituted an abuse of trust; and
- The Registrant failed to demonstrate, up to the time of the hearing, sufficient insight into the impact of her criminal behaviour on the victim.

Having balanced the aggravating and mitigating factors, and taking into account the interests of public protection and public interest, the Committee considered that a sanction was appropriate and proceeded to consider which sanction to apply in this case.

Warning – the Committee considered the issue of a Warning in this case. The Committee considered that the Registrant's conviction demonstrated a serious disregard for the Standards. The circumstances of the

Registrant's impairment of fitness to practise were not at the lower end of the spectrum. The Committee noted that the Registrant's criminal behaviour caused direct serious harm to a member of the public. Therefore, the Committee did not consider this to be a minor matter, and noted that the victim was a relative of a service user. Whilst the incident was isolated and the Registrant has expressed regret, the Committee considered the Registrant's insight to be incomplete.

Conditions of Practice Order – the Committee next considered a Conditions of Practice Order.

The Committee determined that a Conditions of Practice Order would not be sufficient to meet the public interest in this matter, given the seriousness of the Registrant's departure from the standards expected of a registered social care worker. The Committee noted that there were no concerns with the Registrant's practice. However, the Registrant's criminal behaviour occurred outside of the work place, involved the relative of a service user and caused serious physical and psychological harm. In these circumstances, the Committee could not formulate workable, enforceable or verifiable conditions which would address the Registrant's behaviour and adequately address the public interest.

Suspension Order – the Committee next considered a Suspension Order. The Committee noted that it had made findings at the facts and impairment stages of the proceedings which were of a very serious nature, and that the Registrant's actions fell far below the standards to be expected of a registered social care worker.

The Committee carefully considered the issue of proportionality, and whether suspension would address the concerns which it had identified. The Committee noted Paragraph 4.19 of the Indicative Sanctions Guidance, which states:

'4.19 Suspension from the Register may be an appropriate sanction for impairment which while very serious, is not so serious as to justify removal from the Register; for example, where there has been an acknowledgment of failings and where a Committee is satisfied that the behaviour is unlikely to be repeated, and the Registrant has no psychological or other difficulties preventing them from understanding and seeking to remedy the failings and the failings are realistically capable of being remedied, then suspension may be appropriate.'

Although the Committee considered that the Registrant's criminal convictions were serious, it did not consider them so serious as to justify removal from the Register. In particular, the Committee noted that this was a one-off incident, and that it took place outside the workplace with no risk of harm to service users. The Committee determined that the Registrant's behaviour was not fundamentally incompatible with continuing to be a registered social care worker in the long term.

The Committee took into account the reference from Angela Lamont, Action Cancer Shop Manager. The Registrant completed her community service with Action Cancer, and the manager stated as follows in her reference of 10 October 2023:

'To whom it may concern, I have known Jenny just over a 3 week period from her coming into the charity shop i manage to complete her community hours. In this short time I have found Jenny to be a kind considerate hard

worker who has blended well into our team. She is punctual, conscientious, very polite and helpful. Having spoken to Jenny about her conviction I feel that she is very remorseful and devastated by what happened and has took ownership. Jenny is working hard to make ammends [sic] and to move forward in a positive manner.'

The Committee determined that a period of suspension will give a clear message to the Registrant, the public and the profession that the Registrant's conduct was inappropriate for a social care worker. There were no other complaints raised with the Council in respect of the Registrant. This was an isolated incident for which the Registrant has expressed regret and remorse. At the hearing, the Registrant acknowledged the impact of her assault on the victim and the harm she had caused. She also gave evidence that she has learned from what happened, and assured the Committee that this would never happen again. In addition, the Registrant explained to the Committee that she has now refrained from consuming alcohol. The Committee noted that a Suspension Order would be reviewed at the conclusion of the period of suspension, and that the Registrant would have the opportunity to present further evidence of insight into the impact of her behaviour on the victim and the public. The Council would be assisted by the Registrant's continued engagement. The Committee considers that the public interest would be sufficiently protected in the meantime by a period of suspension.

The Committee carefully considered the potential impact which a Suspension Order could have on the Registrant. The Committee noted that the Registrant is the sole earner with responsibility for two children. However, it concluded that any consequences for the Registrant are outweighed by the need to protect the public and maintain public confidence in the social care profession.

The Committee determined that suspension for a period of six months would be proportionate to the seriousness of the facts found proved, and would provide an adequate opportunity for the Registrant to demonstrate remediation, and that her fitness to practise is no longer impaired.

Removal Order - the Committee did consider the sanction of removal. Whilst acknowledging that some of the factors listed in the Guidance were engaged, the Committee concluded that a Removal Order would be disproportionate, in particular as this was a one-off isolated incident, the Registrant having no previous referrals to the Council, and the Registrant expressing remorse and regret for what had happened. The Committee considered that the Registrant showed evidence at the hearing of developing insight and understanding of the impact of her behaviour on both the victim and the reputation of the social care profession. On balance, the Committee was persuaded that a Removal Order at this stage would not be appropriate.

The Committee concluded that a Suspension Order for a period of six months was the most suitable, appropriate and proportionate sanction, to be imposed on the Registrant's registration with immediate effect.

You have the right to appeal this decision to the Care Tribunal. Any appeal must be lodged in writing within 28 days from the date of this Notice of Decision.

You should note that the Fitness to Practise Committee's decision takes effect from the date upon which it was made.

The effect of this decision is that your entry in the Register has been suspended for a specified period of six months, and you may not practise as a social care worker during the period 02 February 2024 to 01 August 2024 inclusive. Your fitness to practise will be reviewed before the expiry of the Suspension Order.

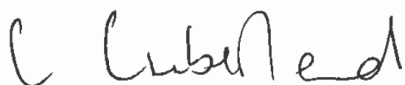
Early Review

The Fitness to Practise Committee may, at your request, review the Order before the end of the period for which the suspension has been imposed if there has been a material change of circumstances since the Order was imposed. The Committee may, after reviewing a Suspension Order, revoke that Order or replace that Order with a Conditions of Practice Order.

Review at Conclusion of Sanction

A review of your fitness to practise will be undertaken towards the end of the period for which the Suspension Order has been imposed. The Council will write to you no later than 12 weeks before the expiry of the Order to invite you to submit any information or documentation which you would like to have considered as part of the review process. The review will consider the particular concerns which have been outlined above by the Fitness to Practise Committee, and will seek to ascertain what remedial steps you have taken during the period of your suspension.

Following the Council's review, the matter may be referred for review by the Fitness to Practise Committee. If the Committee reviews the Order and it is satisfied that your fitness to practise remains impaired, it may impose a further Order to commence upon expiry of the existing Order, or it may impose a Conditions of Practice Order to commence upon expiry of the existing Order, or it may vary the terms of the existing Order, or it may revoke the existing Order and impose a Removal Order.



Head of Hearings Services

06 February 2024

Date